SIVALINGAM CHELLIAH

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, SEREMBAN
ABDUL RAZAK J
[CRIMINAL APPEAL NO. 10 OF 1980]
27 JULY 1981

CRIMINAL PROCEDURE: *Conviction in lower Court under s. 420 Penal Code - On appeal charge substituted to s. 409 Penal Code. CBT - Certificate under s. 319 CPC.*

The appellant was convicted on a charge under s. 420 of the Penal Code and sentenced to one year's imprisonment and fined RM1,000 in default six months' imprisonment.

The appellant was at all material times the Postmaster in charge of Nilai post office in Negeri Sembilan on 22 April 1974. PW1 the complainant who had a Savings Account with the Nilai post office called at the post office and deposited RM2,000 with the appellant who entered the said amount in the Savings Account Pass Book and returned it to him. One year later the complainant sent the book to the Savings Bank Headquarters, Petaling Jaya to credit interest. He did not receive the book back and made inquiries and when a month later he still did not receive the book, he reported the matter to the Postal authorities. He learnt later that only RM1,000 had been credited to his account.

Investigations revealed that, the appellant's signature appeared in the relevant column of the complainant's pass book against the amount. The amount stated in the passbook was RM2,000 whereas amount in the report sheet was RM1,000. Chemist's report revealed that the amount of RM1,000 in the original report sheet had been tampered with the figures altered from RM2,000 to RM1,000. Appellant said in his defence that he wrote down RM2,000 in the pass book and the report sheet but denied that he had altered the amount of RM1,000 in the report sheet.

The charge was substituted to s. 409 Penal Code for CBT from s. 420 for cheating.

Held:

[1] The essential ingredient of cheating is that there must first be a deception followed by a delivery of property consequent thereto. The appellant had not used any kind of deception and did not say anything or do anything in any manner to induce the complainant to part with the RM2,000. The offence of cheating could hardly have taken place.

[2] The charge for one under s. 409 for criminal breach of trust by a public servant should substitute thereunder s. 420 for cheating. There was evidence of entrustment and a breach of the entrustment by the appellant. A criminal breach of trust had clearly therefore been committed. The complainant had deposited the money with the appellant and a position of trust was created between him and the complainant which would result in a criminal breach of trust if there had been a dishonest misappropriation or conversion of that property to the appellant. The act of tampering was itself a dishonest act done in order to cover up the misappropriation.

[Appeal dismissed. Conviction substituted to one under s. 409 Penal Code from s. 420 Penal Code.]

Legislation referred to:
Penal Code, ss. 409, 420

For the appellant - Lee Hin Choon
For the respondent - Balia Yusof bin Wahi

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Also found at [1981] CLJ 88